

WATER COUNCIL MEETING

Dept. of Environmental Services
29 Hazen Dr., Concord, N.H.

April 13, 2005
9:00 a.m.

Members present: Councilors Bridges, Butler, Cowan, Densberger, Ingham, Lussier, Phillips and Varotsis

Members absent: Councilors Barrett, Bradley, DiMarzio, Dupee, Frost, Glines, Lyons, and Patenaude

Chairman Bridges opened the meeting at 9:10 a.m.

1. Approval of Minutes of February 9, 2005 Meeting

A motion was made by Councilor Lussier to accept the minutes of the February 9, 2005 meeting as presented. The motion was seconded by Councilor Phillips and unanimously voted.

5. Legislative Update

Harry T. Stewart, P.E., Water Division Director, reviewed pending legislation with the council.

HB 59 was amended to make clear that municipalities have a responsibility to either provide or assure access to an approved septage disposal facility or a DES approved option. It also requires the department to report to the legislature on the status of communities.

HB 69 requires DES to hold a second public hearing for large groundwater withdrawal permits at which the applicant will present scientific data gathered on the project. The public will have a second opportunity to comment prior to the issuance of a decision by DES. Also, appeals of decisions on large groundwater withdrawals will now come before the Water Council.

HB 148 transfers the estuaries project to UNH. This bill has passed the house.

HB 215 upgrades the reporting requirements on water withdrawals of over 20,000 gallons a day over a 30-day period.

HB 457 exempts dredging and cleaning of artificially constructed stormwater retention ponds from wetlands permit requirements.

SB 83 establishes a commission to study the CSPA in the context of case histories developed over the 10 years since enacted.

SB 103 which assesses a shoreland maintenance fee of 10 cents per linear foot of shoreline frontage on lakes controlled by state owned dams has been tabled.

SB 140 provides authority for the in-lieu fee program for wetlands mitigation to go forward. There appears to be consensus in the environmental community and the regulated community on the rules. The bill has passed the senate.

SB 142 extends the reporting date of the commission to study groundwater withdrawal issues to November 2006.

In response to councilor's questions regarding SB 104, Mr. Stewart indicated that DES opposes this bill which selectively eliminates the tax exemption for landfills and certain other facilities.

2. **Approval of State Aid Grants**

Steve Snell of the Wastewater Engineering Bureau requested approval of five state aid grants as set forth in a memo from Bureau Administrator John R. Bush, P.E. to Harry T. Stewart, P.E., Director, Water Division dated March 30, 2005. In response to Councilor Butler's question, Mr. Snell indicated that all of the towns requesting state aid are accepting septage.

Councilor Varotsis moved to approve the grants and recommend favorable action by the Governor and Executive Council by adoption of the following resolution in its entirety. Councilor Cowan seconded the motion and it was unanimously voted.

WHEREAS, The following municipalities have applied to the Department of Environmental Services, under the provisions of RSA 486, for grants in the amounts listed to aid in the defraying of the costs resulting from the construction of sewage disposal facilities, as defined in said Chapter:

<u>MUNICIPALITY</u>	<u>PROJ. NO.</u>	<u>PROJECT DESCRIPTION</u>	<u>AMOUNT</u>
Littleton	C-693	Washington Street Sewer	\$ 69,331
Stratford	C-694	Mill House WWTF Upgrade	235,416
Jaffrey	C-695	Design of WWTF Upgrade	389,868
Jaffrey	C-696	WWTF Upgrade, Phase I	413,469
Manchester	C-697	CSO Preliminary Design Reports	45,192

WHEREAS, The Department of Environmental Services has examined said applications as to the eligibility of the construction costs for State contributions; and

WHEREAS, The Water Council finds that said projects are intended to control or reduce pollution in the surface waters of the State as defined in RSA 485-A;

NOW THEREFORE, The Water Council finds that all of the provisions of RSA 486 have been met by said applicants and respectfully recommends that the Governor and Executive Council approve said grants and authorize payment thereof through the Department of Environmental Services as provided for in said Chapter.

3. **Status of Appeals**

Michael Sclafani distributed a copy of the Appeal of Ralph and Betsy Booth and an Appeals Status Report. Mr. Sclafani reviewed pending appeals with the council.

- **Docket No. 03-10 WC - Appeal of Conservation Law Foundation**
A stay remains in effect on this appeal. The decision of the Wetlands Council on the related wetlands permit has been appealed to the superior court. Attorneys Irwin and Patterson will file a written request prior to the council's May meeting either to continue the stay pending the outcome of the superior court case or lift the stay and schedule a pre-hearing conference.
 - **Docket No. 03-14 WC - Appeal of Gerald A. Bell**
A stay remains in effect on this appeal pending the resolution of a declaratory judgment action before the Merrimack County Superior Court.
 - **Docket No. 04-05 WC - Appeal of Freudenberg-NOK General Partnership**
A second pre-hearing conference was held on March 21, 2005. As a result, it is likely that Attorney Blenkinsop will file for declaratory judgment in superior court to determine the ownership of the dam, which is the subject of the administrative order under appeal.
 - **Docket No. 04-15 WC - Appeal of Town of Nottingham Selectmen**
On February 10, 2005 the appellant filed a Motion for Rehearing pursuant to the council's January 13, 2005 Decision & Order declining to accept the appeal. Objections to Motion to Reconsider were filed by DES on February 25, 2005 and by the applicant on March 2, 2005. A draft written decision on the Motion for Rehearing is being prepared by council's attorney.
 - **Docket No. 04-17 WC - Appeal of Save Our Groundwater "SOG"**
On February 9, 2005 the appellant filed a Motion for Reconsideration of the council's January 13, 2005 Decision & Order. A draft written decision on the Motion for Reconsideration is being prepared by council's attorney.
- Chairman Bridges requested that Councilor Varotsis contact Attorney Edwards to review pending issues prior to the council's May meeting.
- **Docket No. 04-18 WC - Appeal of Thaddeus Dymon**
A stay remains in effect pending the resolution of a boundary line dispute in superior court.
 - **Docket No. 04-19 WC - Appeal of Town of Newport**
See Docket No. 04-18 above.
 - **Docket No. 04-22 WC - Appeal of Robert Chapman and Chapman Scrap Metal Recycling**
A prehearing conference has been rescheduled for May 2, 2005 pursuant to an assented-to Motion to Continue prehearing conference filed on March 28, 2005.
 - **Docket No. 05-01 WC - Appeal of PSNH**
A prehearing conference was held on March 14, 2005 and an appeal hearing is scheduled for May 11, 2005 at 10:00 a.m.

- **Docket No. 05-02 WC - Appeal of B&S Septic (Raymond St. Laurent)**

This is an appeal of Administrative Order No. WD 05-002 issued on February 1, 2005. The Notice of Appeal was timely filed on March 2, 2005.

Councilor Phillips made a motion to accept the appeal. Councilor Lussier seconded the motion and it was unanimously voted.

Chairman Bridges appointed Vice Chairman DiMarzio as presiding officer.

- **Docket No. 05-03 WC - Appeal of Robert C. Senter**

This is an appeal of Administrative Order No. WD 05-003 issued on February 15, 2005. The Notice of Appeal was timely filed on March 16, 2005 along with a Request to Stay Appeal pending a decision by DES on a Request for Reconsideration.

Councilor Cowan made a motion to accept the appeal. Councilor Butler seconded the motion and it was unanimously voted.

Councilor Cowan made a motion to grant the Request to Stay. Councilor Lussier seconded the motion and it was unanimously voted.

Chairman Bridges appointed Vice Chairman DiMarzio as presiding officer.

- **Docket No. 05-06 WC - Appeal of Ralph and Betsy Booth**

This is an appeal of the denial of a Shoreland Protection Act waiver request dated March 15, 2005 (WB #2004-02265). The Notice of Appeal was timely filed on April 6, 2005.

Councilor Densberger made a motion to accept the appeal. Councilor Butler seconded the motion and it was unanimously voted.

Chairman Bridges appointed Vice Chairman DiMarzio as presiding officer.

4. Proposed Rules

Env-Ws 1600 - Septage Management Rules

Christopher Way, Septage Coordinator, Residuals Management Section, Wastewater Engineering Bureau, presented the status of the septage management rules. The initial proposal has been filed with the Office of Legislative Services and a public hearing was held on March 29, 2005 with approximately 50 people in attendance. The comment period ended on April 8, 2005. DES will forward its response to those people who either attended the public hearing or submitted comments. Mr. Way also will e-mail DES's responses to the Water Council members and keep the council informed throughout the rulemaking process as requested by Councilor Cowan.

Env-Ws 386 - Protecting the Purity of Regulated Watersheds

Paul Susca, Source Water Protection Coordinator, Water Supply Engineering Bureau, presented the initial proposal to readopt Env-Ws 386 with amendments. Councilor Densberger commented that in cases where a watershed is located in more than one town, the rules are adopted only if the ordinance is adopted by each

town within the watershed. Basic protective watershed regulations should be in effect by default, either through legislation or rulemaking, while allowing towns the discretion to adopt more stringent requirements.

6. Other Business

Councilor Butler requested that a presentation be made to the Water Council on the use of road salt alternatives. Mr. Stewart will look into a possible joint presentation by DES and DOT staff.

7. Next Meeting

The next meeting will be held on May 11, 2005.

8. Adjournment

Councilor Varotsis made a motion to adjourn, Councilor Butler seconded the motion and it was unanimously voted.

The meeting adjourned at approximately 10:00 a.m.